



The Employee's Guide to the Family and Medical Leave Act and Temporary Disability Leave



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

An Introduction to the Family and Medical Leave Act

When you or a loved one experiences a serious health condition that requires you to take time off from work, the stress from worrying about keeping your job may add to an already difficult situation.

The Family and Medical Leave Act (FMLA) may be able to help. Whether you are unable to work because of your own serious health condition, or because you need to care for your parent, spouse, or child with a serious health condition, the FMLA provides unpaid, job-protected leave. Leave may be taken all at once, or may be taken intermittently as the medical condition requires.

This guide provides a simple overview of how the FMLA may benefit you.

This Guide Explains:

- Who Can Use FMLA Leave?
- Am I Eligible for FMLA Leave?
- When Can I Use FMLA Leave?
- What Family Members Can I apply For FMLA to Care For?
- What Can the FMLA Do For Me?
- How Do I Request FMLA Leave?
- Communication With Your Employer
- The FMLA Leave Process
- Medical Certification
- Returning to Work
- What If I Don't Qualify For FMLA?

Who Can Use FMLA Leave?

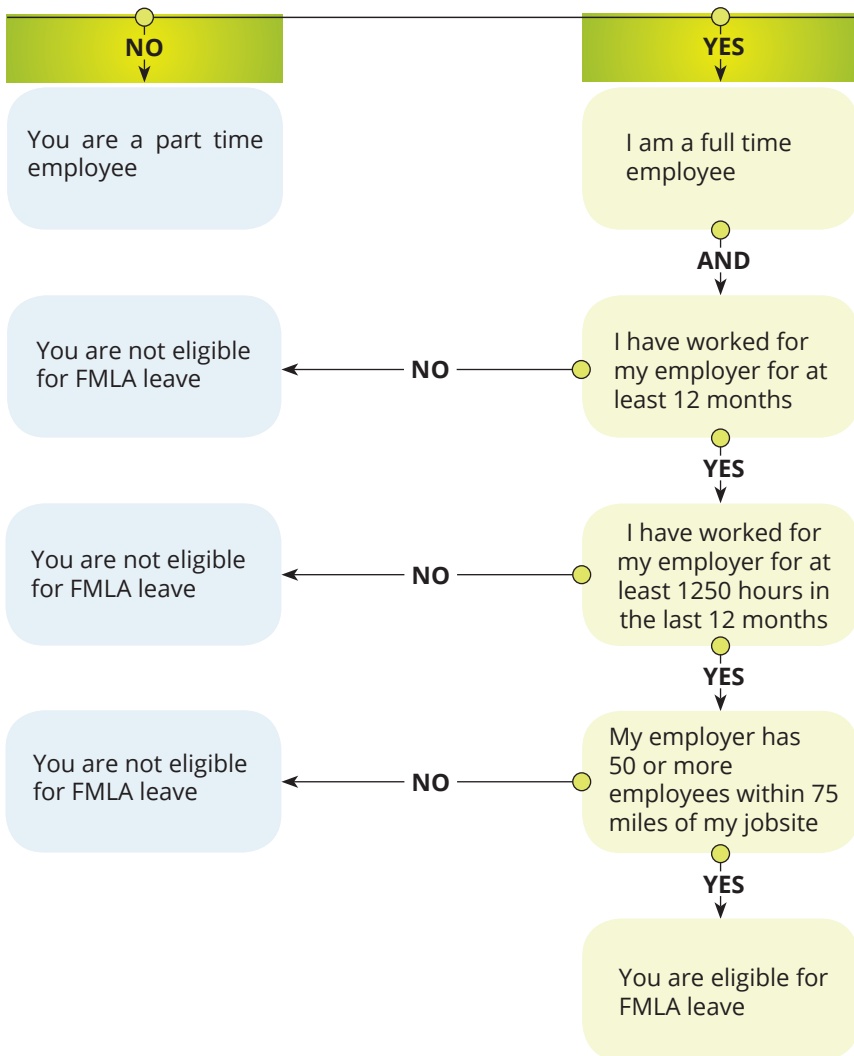
In order to take FMLA leave, you must first work for a covered employer. Private employers with at least 50 employees are covered by the law. Government agencies (including local, state and federal employers) and schools are covered by the FMLA, regardless of the number of employees.

If you work for a covered employer, you need to meet additional criteria to be eligible to take FMLA leave. Not everyone who works for a covered employer is eligible.

First, you must be a full time employee and have worked for your employer for at least 12 months. You do not have to have worked for 12 months in a row (so seasonal work counts), but generally if you have a break in service that lasted more than seven years, you cannot count the period of employment prior to the seven-year break.

Second, you must have worked for the employer for at least 1250 hours in the 12 months *before* you take leave. The 1250 hours excludes vacation, sick days, holidays, and other leaves. Although you can count prior years of service (less than seven) to meet the 12 month criteria, you must have worked the required amount of hours within the 12 *consecutive* months prior to the date your leave is to begin. That works out to an average of about 24 hours per week over the course of a year.

Am I Eligible for FMLA Leave?



When Can I Use FMLA Leave?

If you work for an employer that is covered by the FMLA, and you are an eligible employee, you can take up to 12 weeks of unpaid FMLA leave in any 12-month period for a variety of reasons, including:

Serious Health Condition

You may take FMLA leave to care for your spouse, child or parent who has a serious health condition, or when you are unable to work because of your own serious health condition, which includes pregnancy.

The most common serious health conditions that qualify for FMLA leave are:

- 1) Hospitalization - conditions requiring at least one overnight stay in a hospital or other medical care facility for inpatient care;
- 2) Treatment - conditions that incapacitate you or your *immediate* family member that makes you unable to work or attend school for more than three consecutive days and require ongoing medical treatment, either multiple or single appointments with a health care provider for follow-up care such as prescription medication or testing. (includes conditions that would likely result in an incapacity of more than three days or surgery);
- 3) Chronic Condition/Illness - that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year (such as asthma, diabetes, epilepsy, etc); and
- 4) Pregnancy - including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest.
- 5) Long-Term Conditions - permanent or long-term conditions for which treatment may not be effective, such as a stroke or terminal illness.

Military Family Leave

The FMLA also provides certain military family leave entitlements. You may take unpaid FMLA leave for specified reasons related to certain military deployments. Additionally, you may take up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. However, spouses that are employed by the same employer are only eligible for a **combined** total of 26 weeks. Each spouse isn't entitled to 26 weeks separately.

Expanding Your Family

You may take unpaid FMLA leave for the birth of a child and to bond with the newborn child, or for the placement of a child for adoption or foster care and to bond with that child. Men and women have the same right to take unpaid FMLA leave to bond with their child (called Baby Bonding Leave), but it must be taken within one year of the child's birth or placement, and must be taken as a continuous block of leave.

If both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. (DEC (LEGAL))

What family members can I apply for FMLA to care for?

FMLA only covers care for the employee or immediate family members. Immediate family members are defined as:

Parent

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a child. This term **does not** include parents-in-law.

Child

A child means a biological, adopted, a foster child, stepchild, a legal ward, or a child of a person standing *in loco parentis* at the time that unpaid FMLA leave is to commence, who is under age 18. If the child is 18 or older, they child must be incapable of self-care because of a mental or physical disability at the time that FMLA leave is to begin. This term does not include son or daughter in-law.

Spouse

A husband or wife as defined or recognized in the state or county where the individual was married and includes individuals in a common law marriage or same-sex marriage. Common Law marriages must be declared within the county or state both parties reside, **and** a copy of the certified Declaration of Informal Marriage certificate filed with the county clerk's office must be provided.

In Loco Parentis

A person stands *in loco parentis* if that person provides day-to-day care or financial support for a child, or for a person who stood in loco parentis to that employee when the employee was a child.

Employees with no biological or legal relationship claiming to being in a *loco parentis* situation are entitled to unpaid FMLA leave so long as documentation is provided to sustain the claim.

(for example, an uncle who cares for his sister's children while she serves on active military duty, or a person who is co-parenting a child with his or her partner).

Next of Kin (servicemember only)

Next of kin of a current servicemember is the nearest blood relative, other than the current servicemember's spouse, parent, or child.

Grandparents, aunts, uncles, cousins, nieces, nephews, or any other type of relationship are not applicable, and therefore, not covered under FMLA guidelines.

What Can the FMLA Do for Me?

If you are faced with a health condition that causes you to miss work, whether it is because of your own serious health condition or to care for a family member with a serious health condition, you may be able to take up to 12 weeks of unpaid job-protected time off under the FMLA.

If you take FMLA leave, your employer must continue your health insurance as if you were not on leave, but **you** are required to continue to pay the monthly premiums.

Time off under the FMLA may not be held against you in employment actions such as hiring, promotions or discipline.

You can take FMLA leave as either a single block of time (continuous), or in multiple, smaller blocks of time (intermittent) if medically necessary. You can also take leave on a part-time basis if medically necessary (for example, if after surgery you are able to return to work only four hours a day or three days a week for a period of time). If you need multiple periods of leave for planned medical treatment such as physical therapy appointments or chemotherapy, you must try to schedule the treatment at a time that minimizes the disruption to your employer.

FMLA leave is unpaid leave. Per LISD policy, if you have any personal time off (vacation time, state personal days, comp time, nonwork days, etc), it is required that this paid leave will be used in conjunction with, and concurrently with, your FMLA leave so that you do not lose pay. However, if and when you have exhausted all of your personal paid time off, your paycheck will be docked each month *beginning the first month your approved leave begins* in order to prevent an overpayment. (for example, your leave begins April 25th, therefore, your paycheck will be docked beginning in April). A schedule of any docks or reductions to your paycheck will be sent to you prior to your paycheck being docked, if possible. If at any time while you are on leave that you enter into an overpayment status, your entire paycheck will be withheld until you have worked enough days to exit overpayment status. (Professional and para-professional employees are paid a daily rate, regardless of contract status, and LISD cannot pay you more than you've earned.)

In order to use FMLA, you must follow your employer's normal leave rules, such as submitting a leave request form, giving advance notice, or providing the required return to work documentation in a timely manner.

How do I request FMLA Leave?

To apply for FMLA leave, you must notify the Leave Specialist or the Human Resources Department. Although you may notify your Principal or a coworker, you **MUST** notify the appropriate department as well. If you know in advance that you will need FMLA leave (for example, if you are planning to have surgery or you are pregnant), you must give your employer at least 30 days advance notice.

If you learn of your need for leave less than 30 days in advance, you must give your employer notice as soon as you can (generally either the day you learn of the need or the next day). When you need FMLA leave unexpectedly (for example, if an immediate family member is injured in an accident and they cannot care for themselves), you **MUST** inform the correct department that handles leave requests as soon as you can. You **MUST** follow your employer's usual notice or call-in procedures unless you are unable to do so (for example, if you are receiving emergency medical care).

While you do not have to specifically ask for FMLA leave during your first day of absence, you do need to provide enough information in order for the Leave Specialist to determine if your condition may be covered by the FMLA. If you don't give enough information in order to make that determination, your leave may not be protected.

FMLA is approved based on medical documentation provided on a Certification of Healthcare Provider Form (WH-380-E or WH-380-F), therefore, do not assume your serious health condition or the serious health condition of an immediate family member is automatically covered under FMLA.

FMLA can be requested for full-time or intermittent days. Once a condition has been approved for FMLA leave for a specific amount of time designated by your physician, and you need additional leave for that condition (for example recurring migraines or physical therapy appointments), your physician **MUST** request an extension on either a new Certification form **or** their company letterhead. The request must mention the previously approved health condition, the reason that your leave requires extension, whether it is full-time or intermittently, and a date that the extension will end. Please know that if you exhaust all FMLA and your doctor requests an extension, the extended leave **will not** be covered under FMLA.

When requesting an already approved intermittent FMLA-protected day, you do not have to tell your employer your diagnosis, but you do need to provide information indicating that your leave is due to an FMLA-protected condition (for example, stating that you have been to the doctor and have been given medication for your approved condition and told to stay home for two days).

Communication with Your Employer

Ongoing communication between you and your employer will make the FMLA process run much more smoothly. Each of you has to follow guidelines about notifying the other when FMLA leave is being used.

You will need to inform your employer if your need for FMLA leave changes while you are out (for example, if your doctor determines that you can return to work earlier than expected or your leave needs to be extended). Your employer also requires *you* to provide the status on your intent to return to work, and, if necessary, periodic updates on your status.

Your employer must notify you if you are eligible for FMLA leave within five business days of your first leave request. If the employer says that you are not eligible, they have to state at least one reason why you are not eligible (for example, you have not worked for the employer for a total of 12 months).

At the same time that your employer gives you an eligibility notice, it must also give you a notice of your rights and responsibilities under the FMLA (for example, *this* Guideline).

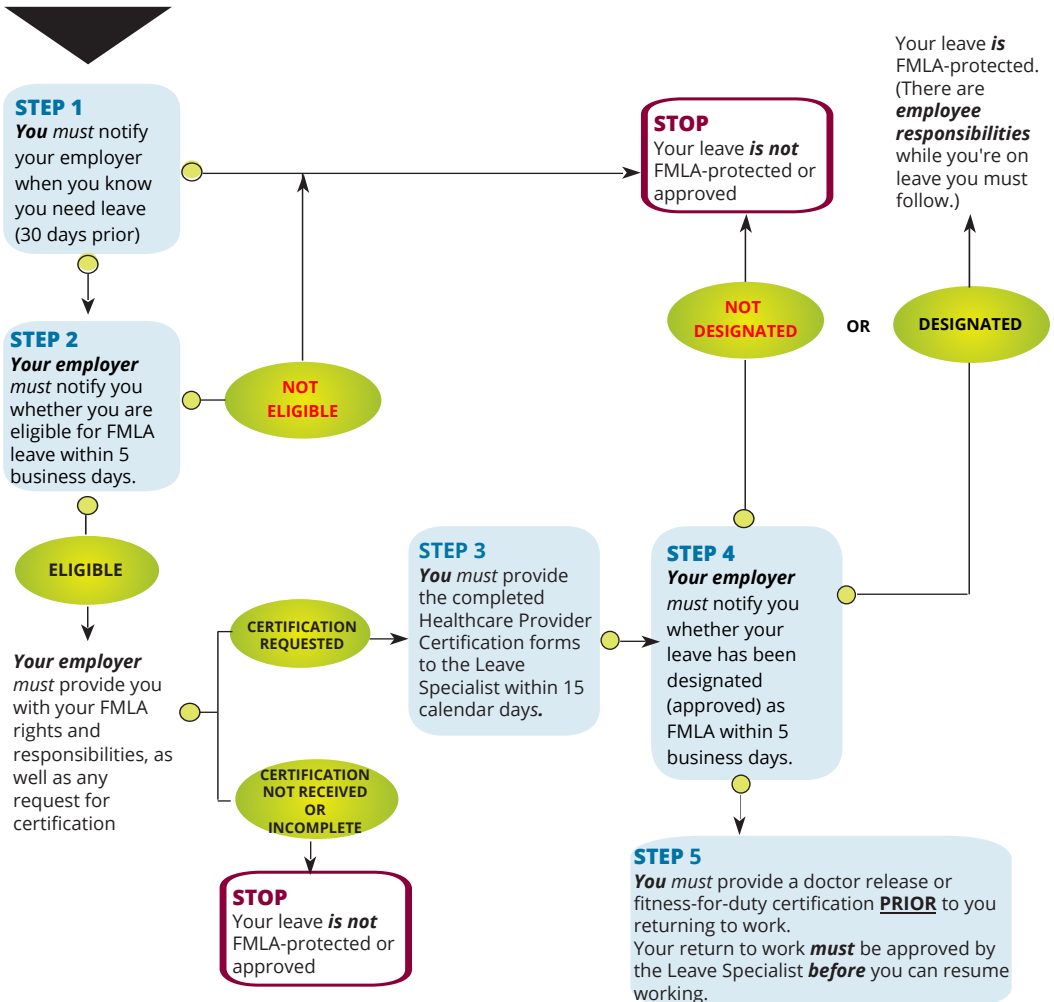
When your employer has the information necessary to determine if your leave is FMLA protected, it must notify you whether the leave will be designated as FMLA leave and, if possible, how much leave will be counted against your FMLA entitlement. If your employer determines that your leave is not covered by FMLA, it must notify you of that determination.

The FMLA Leave Process

This flowchart provides general information to walk you through your initial request for FMLA leave step by step, and help you navigate the sometimes complicated FMLA process.

Please note, it is **ESSENTIAL** for you to be familiar with your employer's leave policy. There are several instances throughout the FMLA leave process where you will need to comply with BOTH the FMLA regulations AND your employer's leave policy.

START HERE



Medical Certification

If your employer requests medical certification, you only have 15 calendar days to provide it. If an extension is required, you must notify the Leave Specialist. **You** are responsible for the cost of getting the certification from a health care provider if a fee is required, and for making sure that the certification is provided to your employer. If you fail to provide the requested medical certification, your FMLA leave may be denied.

The medical certification must include some specific information, including:

- 1) contact information for the health care provider;
- 2) when the serious health condition began;
- 3) how long the condition is expected to last;
- 4) appropriate medical facts about the condition (which may include information on symptoms, hospitalization, doctors visits, and referrals for treatment);
- 5) whether you are unable to work or your family member is in need of care; and
- 6) whether you need leave continuously or intermittently. (If you need to take leave a little bit at a time, the certification should include an estimate of how much time you will need for each absence, how often you will be absent, and information establishing the medical necessity for taking such intermittent leave.)

If your employer finds that necessary information is missing from your certification, they must notify you in writing of what additional information is needed to make the certification complete. **You** are responsible for getting the missing information from your physician within 7 calendar days. If the additional information requested is not provided after 7 calendar days, your FMLA request will be automatically denied without further notice.

If your employer has concerns about the validity of your certification, a second opinion can be requested, but at the cost of the employer. Your employer may also request a third opinion if the first and second opinions differ, but the employer must cover the cost.

If your need for leave continues for an extended period of time, or if it changes significantly, your employer may require you to provide an updated certification. A new or updated Certification of Healthcare Provider form can be requested every 30 days.

Certification at a Glance

STEP 1

Your employer must notify you if a certification is required



STEP 2

You must provide a completed certification to your employer within 15 calendar days



STEP 3

Your employer must designate your leave if it is FMLA-protected



YOUR EMPLOYER MAY REQUIRE YOU TO:

- Correct any deficiencies in your certification identified by your employer within 7 calendar days
- Obtain a 2nd medical opinion if your employer doubts the validity of your certification
- Obtain a 3rd medical opinion if the 1st and 2nd opinions differ

**YOUR EMPLOYER MAY DENY FMLA LEAVE
IF YOU FAIL TO PROVIDE A FULLY COMPLETED CERTIFICATION**

Returning to Work

When you return to work, you must provide medical documentation in the form of a doctor release or Fitness-for-Duty Certification **within 5 days prior** to end of your approved leave period. This medical documentation must be approved by the Leave Specialist **before** the employee can return to work. NO EXCEPTIONS. Approval to return to work by anyone other than the Leave Specialist or Human Resources is not an authorized approval. Failure to comply will result in the employee being sent home without pay.

The FMLA requires that your employer return you to the same job, at the same rate of pay, status, and benefits that you left prior to your leave as long as you are able to return to work at the end of your original approved leave period. Please keep in mind that if you exhaust your yearly FMLA leave entitlement and/or are unable to return to work when originally scheduled to, your employer is *not* required to restore you to the same position you held prior to being on leave.

If you are not returned to the exact same job, the new position must:

- 1) involve the same or substantially similar duties, responsibilities, and status;
- 2) include the same general level of skill, effort, responsibility and authority;
- 3) offer identical pay, including equivalent premium pay, overtime and bonus opportunities;
- 4) offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.); and
- 5) offer the same general work schedule and can be at the same or a nearby location.

An employer is not required to create a new position to accommodate an employee's need for light duty or any other restriction.

If additional time off is needed beyond the 12-week FMLA period, this additional leave period is **not** covered under FMLA.

If a teacher is due to return from leave near the end of the semester (within 3 weeks), the District may require the teacher to continue leave until the end of the semester. If such request is made, the employer is required to pay the employee for these additional days off. These days are not covered by FMLA if such leave has been exhausted.

SPECIAL CIRCUMSTANCES:

Key Employees

Certain *key employees* may not be guaranteed reinstatement to their positions following FMLA leave. A *key employee* is defined as a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees working for the employer within 75 miles of the employee's worksite.

Teachers

Special rules apply to employees of local education agencies. Generally, these rules apply when you need intermittent leave or when you need leave near the end of a school term. Additional leave beyond the 12-week FMLA period is available for full-time educators whose position requires them to have a certification from the State of Texas Board of Educator Certification. This information is available from the Leave Specialist.

What If I Don't Qualify For FMLA?

LISD offers additional leave for employees who do not meet the required guidelines for the FMLA. This leave is called Temporary Disability Leave (TDL). The purpose of TDL is to provide a measure of job protection.

Texas Education Code (TEC) §21.409 provides any full-time employee whose position requires certification from the State Board for Educator Certification (SBEC) (i.e., superintendent, principal, assistant principal, counselor, diagnostician, librarian, and instructional aide) a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties because of a mental or physical disability of a temporary nature. Pregnancy and conditions related to pregnancy are treated the same as any other temporary disability.

LISD expands the eligibility for TDL beyond the TEC. Local temporary disability leave shall be available for **all full-time** employees, other than those with educator certification, as long as the eligibility requirement is met.

Eligibility and Length of Leave

If temporary disability leave is approved for full-time educators, the employee must be employed for 6 months. The length of leave is no longer than 180 calendar days, and leave must be taken in one continuous block of time.

If temporary disability leave is approved for full-time employees other than those with educator certification, the employee must be employed for 6 months, and leave shall not exceed 60 calendar days.

TDL that is unused by any employee will be forfeited for the remainder of the fiscal year (June - July).

Counting TDL

TDL is granted per incident as one continuous block of time and is not intended to be taken on an intermittent or reduced schedule basis. It's the only leave recorded in *calendar days*. This means the nonwork days, such as weekends, holidays, and extended breaks (including spring, winter, and summer breaks), are counted toward the employee's total leave entitlement. As a result, an employee's TDL may span two school years.

Provisions

Employees *must request* temporary disability leave. The request must be accompanied by a physician's statement confirming the employee's inability to work and estimating a probable date of return (Certification of Health Care Provider).

TDL is an **unpaid** leave. LISD requires TDL to run concurrently with other district paid leave *and* Family Medical Leave (FML). If an employee is placed on TDL, districts are not required to contribute to the employee's health insurance premium. Employees may continue the group health care coverage by paying the total premium themselves, which includes the employer's portion.

Return-to-work

An employee *must* submit a request to return to work *at least 30 days prior* to the anticipated return-to-work, when applicable. This request must include a physician's statement regarding the employee's ability to perform his or her regular work duties.

Although TDL provides an employee with a guarantee to return to work, it does not guarantee the employee will be returned to the same position previously held prior to TDL. Reinstatement requirements at the end of TDL include the following:

- The employee must be reinstated to the school he or she was previously assigned, if an appropriate assignment is available.
- If an appropriate assignment is not available, the educator may be assigned to another campus, subject to the approval of the campus principal.
- If a position is not available at another campus before the end of the school year, the employee must be reinstated to a comparable position at the original campus at the beginning of the next school year.



Longview Independent School District Attn:
 Leave Specialist, Kristie Womack
 1301 East Young Street
 Longview, Texas 75606
 Phone 903-381-2374
 Fax 903-381-2246

Request to Apply for Family and Medical Leave and/or Temporary Disability Leave

Employee Name: _____ Employee ID: _____

Campus: _____ Assignment: _____

Choose Option (Choose both options if necessary)

I am requesting **full time** leave beginning _____ month/day/year and ending _____ month/day/year.

I am requesting **intermittent leave**. (Please attach appointment or therapy schedule, if available)

I am requesting to work part time from _____ month/day/year to _____ month/day/year : _____ days per week and _____ hours per day

I am requesting to work Monday Tuesday Wednesday Thursday Friday : _____ hours per day.

If approved, all leave taken for the reason selected above will be designated as TDL and/or FMLA leave, and will count against the maximum allowable of both FMLA leave and TDL you could and/or would be approved to use in the applicable 12-month period from July 1st – June 30th of each fiscal year.

FMLA guideline is as follows:

- **Must be a full time employee and have worked for LISD for at least 12-months**
- **Must work 1250 hours withing the 12-month period directly preceding the start date of your requested leave period**
- **Can request a leave period up to 12-weeks. (maximum allowable)**

TDL guideline is as follows:

- **Only applies to serious health conditions pertaining to the employee only, which includes pregnancy**
- **Can request up to 180 calendar days for full-time employee whose position requires certification from the State Board for Educator Certification (SBEC) who have been employed for at least 6 months (maximum allowable)**
- **All other employees can request up to 60 calendar days (maximum allowable)**

I am requesting an extended leave under the Family and Medical Leave Act (FMLA) and/or Temporary Disability Leave (TDL) for the following qualifying reason (select all that apply):

- a. My own serious health condition.
- b. I am needed to care for my: spouse, child, or parent (in-laws not covered) with a serious health condition.
- c. The birth of my child. (Requires proof of birth from hospital, birthing center, or doula.) (To bond with your child after birth, please choose c and d)
- d. To bond with my newborn or newly-placed child due to adoption, foster care, or ward. (DOES NOT REQUIRE MEDICAL CERTIFICATION)
- e. A qualifying exigency arising out of the fact that my spouse, child, or parent is on covered active duty or has been notified of an impending call or order to covered active duty with the Armed Forces. (Requires copy of orders from the activating entity)
- f. I am needed to care for my spouse child parent (in-laws not covered) who is a covered servicemember with a serious health condition (Military Caregiver Leave)

(Paternity Leave for biological child requires verification of birth from birthing facility. Adoption, foster care, or ward placement requires State/County issued proof of adoption or placement of child.)

By signing this request, I understand that:

1. This form does not qualify me for FMLA or TDL unpaid leave. I must abide by the eligibility requirements of the Family and Medical Leave Act and/or Temporary Disability Leave.
2. Family and Medical Leave and Temporary Disability Leave are unpaid absences.
3. All available personal paid time off will be used concurrently with my approved leave period. (state days, vacation, non-work days, comp time, paid local leave). Once exhausted, my paycheck will be docked at at my daily rate of pay (professional/paraprofessional) or hourly rate (auxillary/hourly employee) per day I am absent.
4. The designated period of incapacity (approved leave period) will be determined by the Certification of Healthcare Provider form received from the treating physician, **NOT** the date range requested above.
5. Additional Medical Certification will be required from each treating physician if I am receiving treatment from multiple physicians for either a single condition, or multiple conditions (i.e.: oncologist, surgeon, treating physicians).
6. Excessive absences beyond the period of incapacity stated by my treating physician will require medical certification every 30 calendar days.
7. Failure to return to work beyond the period of incapacity, after the date released to return to regular duty by any of my healthcare providers with or without restrictions or modified duty, or past the date all FMLA and/or TDL has been exhausted, are considered unexcused absences without job-protected leave. Therefore, I will be subject to the Leaves and Absences Policy, which include disciplinary action up to and including termination.
8. An employee is no longer eligible for any insurance through the district after six (6) months of unpaid leave other than FMLA. If my unpaid leave extends for more than six (6) months, the district will provide me with notice of COBRA rights sent through our insurance carrier.
9. I will be responsible for reimbursement to the District for all health benefit coverages paid on my behalf if I am approved for unpaid FMLA and/or TDL if I have exhausted all of my personal paid leave and my earned income doesn't cover the cost of my benefits.
10. To be restored to work after taking FMLA leave and/or TDL, I am required to provide a return to work without restriction(s) release or Fitness For Duty Certification from my treating physician(s) stated on my medial certification(s). I am required to provide such release to the Leave Specialist **at least 5 days BEFORE** my anticipated return date. I cannot return to work until I am authorized to do so from the Leave Specialist.

I also understand that I am not on job-protected leave while any leave is requested, or Medical Certification is or has been requested or is in my possession or is in my physician's possession or is awaiting review and process by the Leave Specialist. Until my leave is processed and a determination (Designation) is rendered, I am responsible for keeping my principal/direct supervisor aware of all absences, as well as entering them into Skyward. Failure to follow guidelines may result in disciplinary actions according to the Employee Handbook Attendance and Leave Policies.

By signing this form, I attest that I have read this form in it's entirety. Should I have any questions, I will reach out to LISD's Leave Specialist.

Employee Signature: _____ Date _____

